

Commet Electronics Pvt. Ltd. Vs. Commissioner (Customs)

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-24-1998

Reported in : (1998)(62)ECC407

Appellant : Commet Electronics Pvt. Ltd.

Respondent : Commissioner (Customs)

Judgement :

1. Learned Advocate Shri K. Kumar in support of the subject ROM application points out that the original authority vide its Order dated 2-4-1991 confiscated the imported goods under Section 11 (m) & (d) of the Customs Act, 1962, but gave an option to the applicants for redemption of the goods on payment of a fine of Rs. 75,000/-. He also imposed a personal penalty of Rs. 50,000/-.

2. Two issues were involved in the appeal before the Tribunal which decided the same vide its Final Order No. C/2886/97-B2. The Tribunal vide its order gave the following directions in respect of those two issues :- 1. The matter relating to valuation is remanded to Adjudicating Authority for de novo decision after disclosing evidence to the appellants and affording them a reasonable chance of being heard.

2. The part of the order which denies exemption under Notification No. 91/89, dated 1-3-1989 is set aside.

3. He submits that the Tribunal has not directed anything regarding refund of the fine and penalty deposited by the applicants before the Appeal was heard. Since the benefit has already been given regarding the applicability of Notification 91 /89, dated 1-3-1989 and the matter has only been remanded relating to valuation of the goods, fine and penalty, if any, submits the Id. Advocate, would be substantially reduced on de novo adjudication. He further submits that it is well settled position in law that if the matter is remanded, the impugned order gets annulled and therefore any deposits made by the appellant in pursuance of the impugned order are liable to be refunded to the appellants. Consequently the appellants filed refund application for penalty and fine but the said application was held up by the lower authorities, submitted the Id. Advocate, in view of absence of any direction by the Tribunal in its final order relating to fine and penalty. He submits that now that the impugned order has been set aside by the Tribunal and the matter has been remanded for de novo adjudication appellants should be given back the fine and penalty already deposited by them.

4. Opposing the contentions learned JDR, Shri R.S. Sangia submits that the part of the matter relating to valuation has been remanded. The goods have already been redeemed by the applicants herein; therefore if the adjudicating authority in de novo proceedings imposes fine in lieu of confiscation of goods and penalty the said authority will not be have the means to recover the same from the applicants inasmuch as the goods have already gone out of the Customs control. He further submits that the remand proceedings cannot put the appellants/applicants in a position better than when the proceedings were started at the first stage. At that time the Customs had control over the goods valued at Rs. 76,000/- approximately. He, therefore, submits that refunding the amounts of duty and penalty in full as prayed for by the applicants without any protection to the Revenue will be unjustified.

5. We have carefully considered the pleas advanced from both sides.

While in principle we are inclined to agree with the submission of the learned JDR, we observe that the value of goods declared in the Bill of Entry was about Rs. 76,000/-. Therefore, having regard to the fact and circumstances, as narrated

above, we direct the Revenue to refund the amount of fine and penalty totalling to Rs. 1,25,000/- subject to furnishing of a Bank Guarantee by the applicants to the tune of Rs. 75,000/- so that the Revenue may not be put in any adverse position as stated above.

6. Accordingly the following para 3 may be added in the final order of the Tribunal dated 5-12-1997 : "3. As regards the penalty and redemption fine already deposited by the appellants, the Department should refund the amounts of said penalty and fine subject to furnishing of a Bank Guarantee of Rs. 75,000/- by the appellants till the de novo proceedings as ordered above are completed. The adjudicating authority will be at liberty to encash the said bank guarantee in pursuance of the de novo adjudication order which may be passed by it in terms of the Tribunal's present order." 7. At this stage learned Advocate submits that the order of the Tribunal is dated 5-12-1997 and yet the remand proceedings has not been finalised. He therefore, prays for giving directions to the Adjudicating Authority for finalising the de novo proceedings. We expect the Adjudicating Authority will finalise the proceedings within 3 months of receipt of this order.

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